

UNITED STATES INTERNATIONAL TRADE COMMISSION

Agency Form Submitted to OMB for Review

AGENCY: United States International Trade Commission

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of surveys to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with analysis of the effectiveness of §337 remedial exclusion orders, instituted under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

SUMMARY OF PROPOSAL:

- (1) Number of forms submitted: two
- (2) Title of form: USITC Survey Regarding Outstanding §337 Exclusion Orders
- (3) Type of request: new
- (4) Frequency of use: survey, single data gathering, scheduled for 2000.
- (5) Description of responding firms: complainants that obtained exclusion orders from the Commission following an investigation under Section 337 that remains in effect at the time of the survey.
- (6) Estimated number of responding firms: 37
- (7) Estimated total number of hours to complete the forms: 37
- (8) Information obtained from the firm that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

DATES: To be assured of consideration, written comments must be received not later than thirty (30) days after publication of this notice.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents are posted on the Commission's World Wide Web site at <http://www.usitc.gov> or may be obtained from Lynn I. Levine, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone, 202-205-2560. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102, Washington, DC 20503, ATTENTION: Desk Officer for the International Trade Commission. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202-205-1810). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

SUPPORTING STATEMENT FOR
UNITED STATES INTERNATIONAL TRADE COMMISSION INFORMATION COLLECTION
(SURVEY REGARDING OUTSTANDING §337 EXCLUSION ORDERS)

In its Strategic Plan (available on the agency's World Wide Web site at (<http://www.usitc.gov>), the Commission set itself the goal of obtaining feedback on the effectiveness of its exclusion orders from complainants who obtained such orders under 19 U.S.C. 1337. As the Commission is authorized to issue both general and limited exclusion orders, two survey forms are proposed, one for each type of relief. The proposed surveys seek to gather feedback to allow the Commission to assess the effectiveness of statutory relief offered by the Act. This information will allow the Commission both to assess its remedial efforts and to develop and implement proposals to bolster enforcement.

Each survey asks whether and to what extent Commission's exclusion orders are effective in preventing the importation of covered goods. If imports have continued, the survey asks for an estimate of the magnitude and effect on the U.S. market of such imports. The survey also requests information regarding the cost, if any, to complainants of policing the Commission's exclusion orders and the level of satisfaction among complainants with the efforts of the U.S. Customs Service in enforcing the Commission's exclusion orders. It will be sent to complainants who obtained an exclusion order, that currently remains in effect, from the Commission following an investigation under Section 337. Responses are voluntary. While the survey will be made available on the Commission's Web site, responses must be in paper form. The Commission estimates that the survey, which is voluntary, will impose no burden, and will take less than 1 response hour for each of the 37 firms that chose to respond.

As the proposed survey constitutes an information collection as defined by the Paperwork Reduction Act of 1995, this supporting statement is for clearance from the Office of Management and Budget (OMB) to issue it. Copies of the proposed surveys and covering letter with instructions are attached.

A. Justification

1. Request

The U.S. International Trade Commission has the responsibility of investigating unfair methods of competition and unfair acts in the importation of articles into the United States under Section 337 of the Tariff Act of 1930 (19 U.S.C. §1337). Under Sections 337(d)(1) and (d)(2) of the Act, if the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it generally enters either a limited or a general exclusion order directing U.S. Customs Service to deny entry into the United States to goods covered by the order.

2. Purpose

The proposed surveys seek to gather feedback from prevailing complainants in the above section 337 investigations to allow the Commission to assess the effectiveness of statutory relief offered by the Act. This information will allow the Commission both to assess its remedial efforts and to develop and implement proposals to bolster enforcement.

3. Information Technology

The survey will be posted on the Commission's Web site but responses must be in paper form.

4. Non-duplication

The requested information is not available elsewhere.

5. Small businesses

Although some of the firms that will receive a survey are "small businesses," as specified under the Small Business Administration Rules (13 CFR Part 121), this information collection will not have a significant economic impact on these entities. All of these small businesses have previously petitioned the Agency in order to obtain the relief at issue and currently have exclusion orders in effect. To minimize the reporting burden, the surveys were designed to be as brief as possible, consistent with information requirements. Check-in type questions are used to simplify survey response and no supporting documentation is requested. Also, the surveys indicate that estimates are acceptable; this should further reduce the potential burden on smaller firms that may not have the administrative resources or automated record systems of larger firms.

6. Consequence of non-collection

Missed opportunity to improve remedial efforts and to develop and implement proposals to bolster enforcement.

7. Special Circumstances

There are no special circumstances that would cause the survey to be issued in a manner inconsistent with the items specified in item 7 of the specific instructions for the Supporting Statement.

8. Consultations

The Commission's notice soliciting comments on the proposed information collection (the surveys) prior to submitting it to OMB was published in the *Federal Register* on March 24, 2000, page 15922 (copy attached), as required by 5 CFR §1320.8(d). Further, a draft of the proposed surveys was placed on the Commission's Web site, which is regularly accessed by the trade law firms that appear before the Commission. No comments were received.

In addition, the surveys were pretested during September 1999, with regard to availability of data, reporting burden, clarity of instructions, disclosure, and reporting format. The following firms, representing potential responding firms, received copies of the survey and were consulted on the content of the survey.

1. Ideations Design, Inc.
2. Texas Instruments, Inc.
3. Minnesota Mining & Manufacturing, Inc.
4. The Procter & Gamble Company

9. Payments or gifts to respondents

There is no provision for any payment or gifts to respondents.

10. Confidentiality

The Commission does not intend to publish the identities of respondents.

The cover letter to the survey states: "Any commercial or financial data furnished in response to this survey that reveals the individual operations of your firm will be treated as confidential by the Commission to the extent that such data is not otherwise available to the public and will not be disclosed except as may be required by law." The authority for accepting submissions of information as confidential is codified under 19 CFR §§201.6, 210.71 and 210.72.

11. Sensitive information

Information on issues of a sensitive nature involving persons is not being sought.

12. Estimates of burden (October 1999-September 2000)

The Commission estimates that responding to this information collection will take less than 1 response hour for each of the 37 respondents who chose to respond. This estimate is based on the Commission's experience in pretesting the surveys with the potential responding firms identified above. The estimated total cost to respondents of the proposed collection is \$2220 (37 hours times \$60 per hour).

13. Total annual cost burden

Not applicable. This is a nonrecurring data collection with no capital or start-up cost components.

14. Annualized cost to the Federal Government

The estimated total project cost to the Federal Government for distributing the survey and compiling responses is estimated to be \$1,000 (20 hours times \$50 per hour). The survey will be conducted (and the costs incurred) within the 2000 fiscal year.

15. Program changes and/or adjustments

This is a new data collection.

16. Plans for tabulation and publication

After the completed surveys are reviewed and the responses compiled by the Commission staff, the results will be presented to the Commission for follow-up as appropriate, such as inclusion in performance reports under the Government Performance and Results Act. The surveys are scheduled to be mailed on or about August 15, 2000 and responses requested within 30 days after receipt of the survey. The survey is scheduled to be conducted within the 2000 fiscal year.

17. Approval to not display the expiration date for OMB approval

Not applicable. The survey will display the expiration date for OMB approval of the information collection.

18. Consistency with CFR 1320.9 guidelines

There are no known exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1 for this proposed information collection.

B. Collections of Information Employing Statistical Methods

Not applicable.



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

Mr. IP Holder
Complainant, Inc.
123 Main Street
Anytown, USA 12345

Re: Survey regarding outstanding Section 337 exclusion orders

Dear Mr. IP Holder:

On [_____, 19____], the U.S. International Trade Commission ("the Commission") issued an exclusion order which currently bars **[PRODUCT(s)]** that infringe(s) **[claim __ of U.S. Patent No. ____/U.S. Trademark Registration No. ____/ U.S. Copyright No. ____/ COMPLAINANT'S NAME'S trade dress for ____/ and/or COMPLAINANT'S NAME'S common law trademark for ____]** from entry into the United States. This order was entered at the conclusion of an investigation under Section 337 of the Tariff Act of 1930 (19 U.S.C. §1337) that was initiated after receipt of a complaint filed by **[COMPLAINANT'S NAME]**.

The Office of Unfair Import Investigations at the Commission is conducting a survey of parties like **[COMPLAINANT'S NAME]** who obtained exclusion orders from the Commission that are still in effect. This survey is an outgrowth of the Commission's strategic planning efforts and is intended to assess the effectiveness of Section 337 exclusion orders. We ask for your help by completing the enclosed survey and mailing it to us in the enclosed return envelope within 30 days of receipt. Participation in this survey is strictly voluntary.

The thrust of the survey is twofold. First, we are interested in learning about whether the Commission's exclusion order has prevented the importation of goods which have been found to infringe **[COMPLAINANT'S NAME'S]** intellectual property. If imports have continued, we would like to know both the magnitude and the effect on the U.S. market of such imports. Second, we would like to learn about your experience in policing the exclusion order including any investigatory efforts you have undertaken and any interactions you may have had with the U.S. Customs Service. Any commercial or financial data furnished in response to this survey that reveals the individual operations of your firm will be treated as confidential by the Commission to the extent that such data is not otherwise available to the public and will not be disclosed except as may be required by law.

The Commission estimates that it will require less than 1 hour to complete the survey. If you have any comments concerning the accuracy of this estimate or any suggestions for further simplifying the survey, please direct them to the Office of Management and Budget, Office of Information and Regulatory

Mr. IP Holder

[date]

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Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian and Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Thank you very much for assisting the Commission in this regard. Should you have any questions, please do not hesitate to call me at 202-205-2650.

Sincerely,

Lynn I. Levine
Director
Office of Unfair Import Investigations
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

USITC SURVEY REGARDING OUTSTANDING §337 EXCLUSION ORDERS
(General Exclusion Order)

[Title of Investigation]

Inv. No. 337-TA-____

OMB Control No. _____ ****

Expiration _____

1. Since your firm received a permanent exclusion order, do you believe that infringing goods covered by the order have been imported into the United States?
 1. Yes
 2. No
 3. No basis to judge.

2. If you answered "yes" to Question No. 1, what is your estimate of the value of lost sales due to infringing imports between the date you received the permanent exclusion order and December 31, 1999?
 1. \$50,000 or less
 2. \$50,001 - 100,000
 3. \$100,001 – 500,000
 4. \$500,001 – 1,000,000
 5. \$1,000,001 – 5,000,000
 6. More than \$5,000,000 (specify to nearest million) _____
 7. No basis to estimate

3. If you answered "yes" to Question No. 1, what is your estimate of the amount of sales you have lost due to infringing imports as a percentage of your total sales ([amount of lost sales ÷ your total sales] x 100) between the date you received the permanent exclusion order and December 31, 1999?
 1. 5% or less
 2. 5.01 – 10.00%
 3. 10.01 – 20.00%
 4. 20.01 – 33.33%
 5. 33.34% – 50.00%
 6. 50.01% – 66.67%
 7. 66.68% – 100.00%

**** In accordance with 19 C.F.R. Section 1320.5(b)(2)(i), you need not respond at all unless this survey displays a valid OMB control number.

4. To what degree has the value of infringing imports entering the U.S. marketplace increased or decreased since the permanent exclusion order was issued? (For the goods covered by this order, compare a recent time period to a similar time period just before the order was issued.)
1. Increased substantially
 2. Increased moderately
 3. Increased slightly
 4. Remained about the same
 5. Decreased slightly
 6. Decreased moderately
 7. Decreased substantially
 8. No basis to judge
5. To what extent have infringing imports covered by the permanent exclusion order hurt your company's sales since the order was issued?
1. Little or no extent
 2. Some extent
 3. Moderate extent
 4. Substantial extent
 5. Very great extent
 6. No basis to judge
6. Has your firm used an in-house or outside person or investigative group to identify foreign-made infringing goods covered by the permanent exclusion order that were intended for sale in the United States?
1. Yes.
 2. No
7. If you answered "yes" to Question No. 6, what is your estimate of the approximate total cost to your firm to maintain this investigative person or group during your firms's most recently completed fiscal year?
- \$ _____
- /_/ No basis to judge

8. Has your firm provided information to U.S. Customs that has led U.S. Customs to interdict shipments of goods covered by the permanent exclusion order?
1. Yes.
 2. No
9. If you answered “yes” to Question No. 8, what is your firm’s level of satisfaction with U.S. Customs’ response to your information that goods covered by the permanent exclusion order are entering the country?
1. Very satisfied.
 2. Satisfied
 3. Neither satisfied nor dissatisfied
 4. Dissatisfied
 5. Very dissatisfied.

USITC SURVEY REGARDING OUTSTANDING §337 EXCLUSION ORDERS

(Limited Exclusion Order)

[Title of Investigation]

Inv. No. 337-TA-____

OMB Control No. _____ ****

Expiration _____

10. Since your firm received a permanent exclusion order, do you believe that infringing goods covered by the order have been imported into the United States by or on behalf of **[entities named in limited exclusion order]**?
1. Yes
 2. No
 3. No basis to judge.
11. If you answered “yes” to Question No. 1, what is your estimate of the value of lost sales due to these infringing imports between the date you received the permanent exclusion order and December 31, 1999?
1. \$50,000 or less
 2. \$50,001 - 100,000
 3. \$100,001 – 500,000
 4. \$500,001 – 1,000,000
 5. \$1,000,001 – 5,000,000
 6. More than \$5,000,000 (specify to nearest million) _____
 7. No basis to estimate
12. If you answered “yes” to Question No. 1, what is your estimate of the amount of sales you have lost due to these infringing imports as a percentage of your total sales ([amount of lost sales ÷ your total sales] x 100) between the date you received the permanent exclusion order and December 31, 1999?
1. 5% or less
 2. 5.01 – 10.00%
 3. 10.01 – 20.00%
 4. 20.01 – 33.33%
 5. 33.34% – 50.00%
 6. 50.01% – 66.67%
 7. 66.68% – 100.00%
13. To what degree has the value of infringing imports of **[entities named in limited**
- _____

**** In accordance with 19 C.F.R. Section 1320.5(b)(2)(i), you need not respond at all unless this survey displays a valid OMB control number.

exclusion order] in the U.S. marketplace increased or decreased since the permanent exclusion order was issued? (For the goods covered by this order, compare a recent time period to a similar time period just before the order was issued.)

1. Increased substantially
2. Increased moderately
3. Increased slightly
4. Remained about the same
5. Decreased slightly
6. Decreased moderately
7. Decreased substantially
8. No basis to judge

14. To what extent have infringing imports of **[entities named in limited exclusion order]** covered by the permanent exclusion order hurt your company's sales since the order was issued?

1. Little or no extent
2. Some extent
3. Moderate extent
4. Substantial extent
5. Very great extent
6. No basis to judge

15. Has your firm used an in-house or outside person or investigative group to identify foreign-made infringing goods of **[entities named in limited exclusion order]** covered by the permanent exclusion order that were intended for sale in the United States?

1. Yes.
2. No

16. If you answered "yes" to Question No. 6, what is your estimate of the approximate total cost to your firm to maintain this investigative person or group during your firms's most recently completed fiscal year?

\$ _____

/_/ No basis to judge

17. Has your firm provided information to U.S. Customs that has led U.S. Customs to interdict shipments of goods by or on behalf of **[entities named in limited exclusion order]** covered by the permanent exclusion order?

1. Yes.
2. No

18. If you answered "yes" to Question No. 8, what is your firm's level of satisfaction with

U.S. Customs' response to your information that goods from or on behalf of **[entities named in limited exclusion order]** covered by the permanent exclusion order are entering the country?

1. Very satisfied.
2. Satisfied
3. Neither satisfied nor dissatisfied
4. Dissatisfied
5. Very dissatisfied.